

ESTTA Tracking number: **ESTTA56611**

Filing date: **12/07/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Citigroup Inc.
Granted to Date of previous extension	12/07/2005
Address	399 Park Avenue New York, NY 10043 UNITED STATES
Attorney information	Jonathan Moskin White & Case LLP 1155 Avenue of the Americas New York, NY 10036 UNITED STATES jmoskin@whitecase.com Phone:212-819-8853

Applicant Information

Application No	78483473	Publication date	08/09/2005
Opposition Filing Date	12/07/2005	Opposition Period Ends	12/07/2005
Applicant	MidAmerica Bank FSB 55th & Holmes Avenue Clarendon Hills, IL 60514 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. First Use: 2004/08/01 First Use In Commerce: 2004/08/01
All goods and services in the class are opposed, namely: banking services

Attachments	Notice_o.pdf (4 pages)
Signature	/s/Jonathan Moskin
Name	Jonathan Moskin
Date	12/07/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/483,473
Published in the Official Gazette on August 9, 2005
Mark: TOTALLY FREE CHECKING PLUS

CITIGROUP INC.,

Opposer,

-against-

MIDAMERICA BANK FSB,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

TO THE COMMISSIONER FOR TRADEMARKS:

Opposer Citigroup Inc. believes it will be damaged by registration of the mark TOTALLY FREE CHECKING PLUS as shown in the above-identified application and hereby opposes the same pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the “Lanham Act”), 15 U.S.C. § 1063(a).

As grounds for the opposition, Opposer alleges that:

1. Opposer Citigroup Inc., a corporation organized and existing under the laws of Delaware with its principal place of business at 909 Third Avenue, New York, New York 10022, is today’s pre-eminent financial services company, with some 200 million customer accounts in more than 100 countries.

2. For many decades, and long before August 1, 2004, the alleged date of first use of the application herein opposed, Opposer and its predecessor-in-interest, Citicorp, have used the trademark CHECKING PLUS in connection with their offering of financial services.

3. Since at least as early as June 1966, Opposer and its predecessor-in-interest have used the mark CHECKING PLUS on or in connection with checking accounts with overdraft privileges.

4. Opposer and its predecessor-in-interest have expended considerable time, effort and money advertising and publicizing the sale of services bearing the mark CHECKING PLUS.

5. As a result of Opposer and its predecessor-in-interest's long and successful use of the mark CHECKING PLUS, the mark has come to identify Opposer's financial services and to represent substantial goodwill belonging exclusively to Opposer.

6. In addition to Opposer's common law rights in the mark CHECKING PLUS, Opposer's predecessor-in-interest, Citicorp, owns federal trademark registration number 879,677 for the mark CHECKING PLUS. This registration is valid and subsisting, unrevoked and uncanceled, and has become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

7. By the application herein opposed, Applicant seeks to register the mark TOTALLY FREE CHECKING PLUS. The application was filed on the basis of Applicant's alleged use of the mark in connection with the broad category of "banking services" in International Class 36.

8. The services for which Applicant seeks registration are virtually identical to services in connection with which the CHECKING PLUS mark has been used and is in use.

9. Applicant allegedly commenced using the mark TOTALLY FREE CHECKING PLUS mark on August 1, 2004, many decades after Opposer's predecessor-in-interest adopted and began using the mark CHECKING PLUS Mark.

10. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the marks sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

11. Registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), because Applicant's use of the mark TOTALLY FREE CHECKING PLUS will falsely suggest a connection between Applicant and Opposer named herein, to the damage of Opposer.

12. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's TOTALLY FREE CHECKING PLUS mark so closely resembles the CHECKING PLUS mark used consistently by Opposer in the United States, as to be likely, when used on or in connection with the goods identified in the Application, to cause confusion, or to cause mistake, or to deceive, with consequent injury to Opposer and to the public.

WHEREFORE, Opposer believes it will be damaged by the registration of Applicant's TOTALLY FREE CHECKING PLUS mark for the services identified in Application Serial Number 78/483,473 and respectfully requests that the opposition be sustained and registration of said designation be denied.

Pursuant to 37 C.F.R. §2.6(a)(17), Opposer respectfully requests that the \$300.00 statutory fee for filing a Notice of Opposition in one international class, and any additional amounts, be charged to Deposit Account No. 23-1705.

All communication should be addressed to Opposer's counsel, White & Case

LLP, at the below stated address.

Dated: New York, New York
December 7, 2005

Respectfully submitted,

WHITE & CASE_{LLP}

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